

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>In re: BAIR HUGGER FORCED AIR WARMING DEVICES PRODUCTS LIABILITY LITIGATION</p> <p>This document relates to: <i>Ballasso v. 3M Company, et al.</i> Case Action No. 18-cv-00575</p>	<p>MDL No. 15-2666 (JNE/FLN)</p> <p>JUDGE: JOAN N. ERICKSEN MAG. JUDGE: DAVID T. SCHULTZ</p>
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PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS

I. BACKGROUND

3M Company and Arizant Healthcare, Inc. (“Defendants” collectively) have moved this Court for an order dismissing plaintiff Marilyn Ballasso’s claims with prejudice for failure to comply with Pre-Trial Order (“PTO”) 23. [Doc. 2028].

The Plaintiff in this matter, Ms. Ballasso, filed her Complaint on March 1, 2018. On May 30, 2018, Plaintiff submitted her initial PFS. Defendants identified several deficiencies and her case was placed on the list for dismissal pursuant to PTO 14 back in October of 2018. The October motion was withdrawn when Ms. Ballasso served an updated PFS prior to the hearing. In January of 2019, Ms. Ballasso passed away. Her daughters contacted us and, upon learning of her passing, we immediately filed a suggestion of death. [Doc. 9]. Since that time we have been in contact with Ms. Ballasso’s two daughters, who have been working to locate and provide the information needed to cure the deficiencies in the PFS. In fact, just today, we received a response containing the information deemed deficient as well as an executed authorization. Upon receiving this communication, we immediately reached out to counsel for Defendants and

requested an extension of 90 days to obtain the appropriate appointments and substitute parties.

II. ARGUMENT

Plaintiff respectfully requests that the Court deny this Motion to Dismiss and allow Ms. Ballasso's daughters an opportunity to obtain the appropriate appointments and be substituted as the Plaintiff for this matter. Plaintiff appreciates the technical requirements posed by the governing Pre-Trial Orders in this matter, however, as the information missing from the PFS has now been provided and updated authorizations obtained, Plaintiff requests an opportunity for the case to be heard and either upheld or ultimately discharged on its merits. Indeed, Minnesota Courts including this one, have a stated preference for resolving claims on the merits. *See, e.g., Select Comfort Corp. v. Kittaneh*, 161 F. Supp. 3d 724, 728 (D. Minn. 2014) (citing *Chorosevic v. MetLife Choices*, 600 F.3d 934, 947 (8th Cir.2010)); *Anderson v. Rengachary*, 608 N.W.2d 843, 851 (Minn. 2000) (citing *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 193 (Minn.1990)).

Moreover, allowing this brief extension will not prejudice the Defendants in any way. As with the vast majority of other cases filed in this expansive multi-district litigation, this matter is currently stayed – with the exception of the PFS and related technical issues. Therefore, as there are no current, pressing substantive deadlines that will require rescheduling or duplicative attention of the Defendants.

III. CONCLUSION

Granting a dismissal of this matter, with prejudice, for technical violations that have now been cured will not serve to further justice for Ms. Ballasso or her daughters in any way – nor will it prejudice Defendants. Thus, Plaintiffs respectfully request that this Motion be denied and they be granted the opportunity to substitute Parties and continue forward.

Dated: July 24, 2019

Respectfully submitted,

s/Amanda M. Williams
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